IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 1204 of 2002.

Sanjay Khanderao Deore,]
R/o Kalamdari Taluka Nandgaon,]
District Nasik.] ...Appellant

Versus

The State of Maharashtra. ...Respondent

Ms Pranali P Kakade for the appellant.

Ms P H Kantharia, Addl Public Prosecutor for State.

CORAM: V.G.PALSHIKAR, Acg, C.J.&
SMT. NISHITA MHATRE J.

DATE: SEPTEMBER 5, 2006.

JUDGMENT(Per PALSHIKAR, Acg, C.J.):-

This appeal is directed against the order of conviction recorded by the 3rd Additional Sessions Judge, Nasik in Sessions Case No.193 of 1999 convicting the accused under section 302 of the Indian Penal Code and sentencing him to suffer imprisonment for life and to pay a fine of Rs.500/-.

2. With the assistance of the learned Advocate appearing for the appellant (appointed by this Court) and the learned Additional Public Prosecutor, we have scrutinised the records and reappreciated the evidence on record. The prosecution case as disclosed on reappreciation of the evidence stated briefly is that the accused was married to the victim Vaishali

on 11th February, 1997. It was an arranged marriage and the accused had a grudge against Vaishali and her in-laws for not giving him enough utensils as part of dowry and he, therefore, used to ill-treat his wife because of this.

3. On 14th April, 1999 the accused with his wife Vaishali went to the house of Vaishali's father. Both accused and Vaishali stayed for a night, in the morning the accused left the house saying that Vaishali's character is loose and the child she is bearing is not his and, therefore he is going away. However on 16th April, 1999 he returned to the house of Vaishali's parents, had his dinner and stayed there for the night. They slept in a room where others slept outside the court yard. In the morning the mother of the victim noticed that Vaishali has been killed, raised alarm. First information report was lodged. During the investigation the accused was traced and arrested on 21st April, 1999. The prosecution, on completion of the investigation, chargesheeted the accused under section 302 of the I.P.C and examined 10 witnesses to prove its case that the accused intentionally killed the victim Vaishali.

4. The learned trial judge on appreciation of the entire evidence on record came to the conclusion that the accused was guilty under section 302 of the I.P.C. She, therefore, proceeded to convict the accused under section 302 of the I.P.C and sentenced him to suffer imprisonment for life. It is this order which is assailed in this appeal.

5. It was contended by the learned advocate appearing on behalf of the accused that there is no ocular in this case and the chain of circumstances proved by the prosecution is not

adequate to warrant conviction. Many links are missing and, therefore, the conviction could not take place. According to the learned advocate there is no motive for the accused to kill the victim. The evidence of his return on 16th April, 1999 is also not enough for coming to the clinching conclusion that the accused left the house abusing the victim and factually returned on 16th April, 999. The witnesses who saw the accused going way in the early morning are the chance witnesses and could not be believed. This submission is countered by the Additional Public Prosecutor. According to her every link in chain of circumstances is duly proved and the trial judge did not commit any error either in law or in fact in recording the order of conviction and sentence. She claims that it is liable to be maintained. We have examined these rival contentions in light of the evidence as reappreciated by us.

6. P.W. 1 Ganpat is a panch witness. The inquest and spot panchnamas were executed in his presence. He has proved both the panchnamas as also seizure made, by which certain articles were seized from the spot. There is nothing in the cross examination of this witness to indicate that he was either a planted witness or a regular punter of the police.

7. P.W.2 Bhaginath is the father of the deceased who lodged the first information report with the police. He has deposed to the entire happenings in his deposition. He has described the attending circumstances, visit of the couple first on 14th April, 1999, leaving of accused inn the morning of 15th April, 1999 and return of the accused in the morning of 16th April, 1999 and his disappearing in the morning of 17th April,

1999. He has proved the first information report which he lodged after the death of his daughter Vaishali was discovered. This witness has been extensively cross examined on various aspects of his depositions but he has not been shaken at all.

8. P.W.3 Manisha is the sister of the victim and she saw the accused and the victim together when they went to sleep in the room at night. P.W.4 Nitin also has deposed to the same effect as Manisha. Therefore there are two witnesses examined by the prosecution to support that they saw the accused and the victim sleeping inside the room.

9. P.W.5 Balu is the resident of neighbourhood and when he woke up in the morning he saw accused going away from the house of the complainant on 17th April, 1999 around 1.15 A.M. The presence of the witness in the vicinity is natural and he got up at 1.15 A.M. is also natural. His coming out of the house is also natural and by no stretch of imagination this witness can be branded as a chance witness. It is also the case of the prosecution that he was the sole witness who saw the accused going away in the morning. P.W. 6 Pandit has also deposed to the same effect. Coming back of of the accused to the house of the victim on 16th April, 1999 is further proved by the prosecution through witness Ashok, who is examined as P.W. 7. P.W. 10 Doctor proves the homicidal death. P.W. 9 is the investigation officer and P.W. 8 is another panch. It was on appreciation of this evidence that the learned trial judge came to the conclusion of guilt of the accused.

10. We have also scrutinised the judgment of the learned trial judge impugned in this appeal. We have also reappreciated the evidence. In our opinion, the prosecution has succeeded in proving all the necessary circumstances leading to the only conclusion of the accused being guilty. The prosecution has proved the following:

(a) that the accused and the victim were married in the year 1997.

(b) that the accused had a grudge against the victim and her family over gifts given at the time of marriage.

(c) On 14th April, 1999 the couple went to the parental house of he victim Vaishali.

(d) they stayed there, had their meal and slept there.

(e) in the morning of 15th April, 1999 the accused left the house of the complainant, leaving the victim behind stating that the pregnancy of the victim was not because of him, thus doubting her character.

(f) his coming back on 16th April, 1999 morning is proved by P.W.7 Ashok, who independently corroborates the testimony to that effect of P.W. 2, father of the deceased.

(g) the statement by P.W.2 that the accused and the victim slept together inn the house in night of 16th April, 1999 is duly corroborated by the testimony of P.Ws. 3 and 4, who were proved the testimony of the complainant and who are natural witnesses.

(h) death of the victim was caused by strangulation.

(i) the clothes and articles belonging to the accused were seized from the spot on 17th April, 1999 morning itself.

11. All these circumstances prove beyond doubt that it was the accused and the accused alone who throttled death of Vaishali, his wife, motive being doubt about her fidelity. We have, therefore, no hesitation in confirming the findings reached by the trial judge. As a consequence thereof the appeal is liable to dismissed.

12. However, before we proceed to pass the operative order we would like to quantify the fees to be paid to the advocate defending the accused as appointed by us as also the Additional Public Prosecutor. Accordingly, we quantify the fees at Rs.2,000/- payable each to the advocate of the accused and the Additional Public Prosecutor appearing. When this was being done several advocates appearing on behalf of the accused persons and serving the cause of justice told us that though fees are quantified by the Court having jurisdiction to quantify the same, they are not paid by the accounts department of the Government for the reason that the High Court does not have power to quantify the fees. Similar is the situation of the Additional Public Prosecutors. Even those fees which are quantified by the court are not being paid on the same pretext. Effective representation of the prosecution is also equally important part of the administration of justice. Without the able and proper

assistance from the prosecution, it may not be possible to properly consider the aspect of conviction or acquittal and, therefore, fees payable to the Additional Public Prosecutors also are required to be quantified and on quantification paid.

13. Section 304 of the Code of Criminal Procedure specifically embodies this right as a statutory right vested in an accused person. It, in fact gives effect to the Constitutional mandate contained in Articles 21 and 39A of the Constitution. It is obvious that the right to be defended is essentially connected with right to life, which every citizen enjoys as conferred by Article 21. Denial of an adequately competent advocate to defend the accused when he is unable to defend himself, is factually violation of Article 21 of the Constitution, which nobody can be allowed to do, much less repeatedly as is being done by the audit department of the Government of Maharashtra. The amounts which are paid after months presently are grossly inadequate and they do not take into consideration the length of time spent for arguing the matter or studying the mater before it is worked out in front of the appropriate Bench. In our opinion this situation needs urgent remedy. It is absolutely essential that immediate steps in this behalf are taken by the Government.

14.We are also aware that we ourselves can in exercise of our power under Article 226 of the Constitution issue positive directions to the State in this behalf. However, we hope and trust that the higher authorities and the Hon`ble Ministers concerned would do the needful as early as possible without requiring any mandate from the Court. Therefore, we feel it essential to bring this aspect to the notice of the Government. A copy of this judgment be sent to (1)Director of Prosecution, (2) Principal Secretary, Law and Judiciary Department; and (3) Principal Secretary to the Finance Department for appropriate action in this regard.

15. In the result, appeal fails and is dismissed. Costs are quantified at Rs.2000/- as mentioned above.